

2013 DRAFTING REQUEST

Bill

Received: 12/10/2013

Received By: mduchek

Wanted: As time permits

Same as LRB:

For: Mary Czaja (608) 266-7694

By/Representing: Emily Loe

May Contact:

Drafter: mduchek

Subject: Occupational Reg. - misc

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Czaja@legis.wisconsin.gov

Carbon copy (CC) to: michael.gallagher@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Informed consent for podiatrists, chiropractors, dentists, and optometrists

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 1/7/2014			_____			
/P1	mduchek 1/15/2014	evinz 1/15/2014	jmurphy 1/13/2014	_____	lparisi 1/13/2014		State S&L
/1			jmurphy 1/15/2014	_____	mbarman 1/15/2014	lparisi 1/16/2014	State S&L

FE Sent For:

At
Intro.

<END>

2013 DRAFTING REQUEST

Bill

Received: **12/10/2013**

Received By: **mduchek**

Wanted: **As time permits**

Same as LRB:

For: **Mary Czaja (608) 266-7694**

By/Representing: **Emily Loe**

May Contact:

Drafter: **mduchek**

Subject: **Occupational Reg. - misc**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Czaja@legis.wisconsin.gov**

Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Informed consent for podiatrists, chiropractors, dentists, and optometrists

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 1/7/2014						
/P1	mduchek 1/15/2014	evinz 1/15/2014	jmurphy 1/13/2014		lparisi 1/13/2014		State S&L
/1			jmurphy 1/15/2014		mbarman 1/15/2014		State S&L

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 12/10/2013 Received By: mduchek
 Wanted: As time permits Same as LRB:
 For: Mary Czaja (608) 266-7694 By/Representing: Emily Loe
 May Contact: Drafter: mduchek
 Subject: Occupational Reg. - misc Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: Rep.Czaja@legis.wisconsin.gov
 Carbon copy (CC) to: michael.gallagher@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Informed consent for podiatrists, chiropractors, dentists, and optometrists ✓

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mduchek 1/7/2014						
/P1		evinz 1/10/2014	jmurphy 1/13/2014		lparisi 1/13/2014		State S&L
FE Sent For:	11 eev 4/15/14	11 eev 4/15/14	gm + JL 1/15				

<END>

2013 DRAFTING REQUEST

Bill

Received: 12/10/2013 Received By: mduchek
 Wanted: As time permits Same as LRB:
 For: Mary Czaja (608) 266-7694 By/Representing: Emily Loe
 May Contact: Drafter: mduchek
 Subject: Occupational Reg. - misc Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: Rep.Czaja@legis.wisconsin.gov
 Carbon copy (CC) to: michael.gallagher@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Informed consent for podiatrists, chiropractors, dentists, and optometrists ✓

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
1/2	mduchek	1/10/14 epl eev	1/10/14 epl eev	1/10/14 jmt g/b			

FE Sent For:

<END>

Duchek, Michael

From: Loe, Emily
Sent: Wednesday, December 11, 2013 9:57 AM
To: Duchek, Michael
Subject: RE: Drafting request from Rep. Czaja

Mike,

Makes sense to me. I passed on your suggestion to the folks Rep. Czaja has been working with; they came back with the attached revised document. Does it accomplish the goal you're describing?

Emily



From: Duchek, Michael
Sent: Wednesday, December 11, 2013 8:22 AM
To: Loe, Emily
Subject: RE: Drafting request from Rep. Czaja

Emily,

I ran this by Anne and I think she agreed that it wouldn't seem to work as they have it laid out in their proposed statutes, as it suggests that other professions are held to a standard set by physicians. If they somehow maybe want physicians to set the standard of disclosure for podiatrists, optometrists, etc., maybe there might be a way to accomplish that in a bill, but I wonder if the intent is actually to say that there is a "reasonable chiropractor" standard for chiropractors, a "reasonable podiatrist" standard for podiatrists, etc., because there seems to be a discrepancy between the text of the proposed statutes and what they describe in their analysis. In their analysis, it suggests something more along the lines of what I have described (i.e., that the podiatrist would have to disclose what a reasonable podiatrist would disclose). So I would suggest using a "reasonable X" standard where X = the particular profession, instead of referring to a "reasonable physician" standard for professions that are not physicians. Does that make sense?

-Mike

From: Loe, Emily
Sent: Tuesday, December 10, 2013 2:16 PM
To: Duchek, Michael
Subject: RE: Drafting request from Rep. Czaja

Mike,

Yes, please share with Anne at Leg Council to get her input, before we proceed with a draft.

Thank you!

Emily

From: Duchek, Michael
Sent: Tuesday, December 10, 2013 1:53 PM
To: Loe, Emily
Subject: RE: Drafting request from Rep. Czaja

Emily,

I am the correct person and can handle this request.

I read over the request though, and it seems that the intent is to hold podiatrists, chiropractors, dentists, and optometrists to the same standards as physicians. However, s. 448.30, as modified by AB 139, uses a reasonable physician standard that is predicated on the treating physician's specialty (i.e., orthopedics, oncology, etc.). Since podiatrists, chiropractors, dentists, and optometrists are, by definition, not physicians, I don't think using this language referring to a physician's specialty works in those contexts (because they're not physicians who have any such medical specialty). I could share the request with Anne Sappenfield at Leg. Council who worked on AB 139 and might have some further thoughts. Would that be OK or would you just like a draft at this point? Let me know either way or if you have any other thoughts,

-Mike

From: Loe, Emily
Sent: Tuesday, December 10, 2013 1:33 PM
To: Duchek, Michael
Subject: Drafting request from Rep. Czaja

Michael,

Rep. Czaja would like to request a draft for the attached document, related to informed consent for podiatrist, chiropractor, dentist, and optometrist. I assumed you are the drafter to contact as you worked on the physicians' bill – please let me know if I should redirect this request.

Emily

<< File: 20131210135357904.pdf >>

Emily Loe | Office of Rep. Mary Czaja
35th Assembly District
(o) 608-266.7694 | (e) emily.loe@legis.wi.gov

2013-2014 LEGISLATURE

An Act to create 448.6(m), 446.(m), 447.(m) and 449.(m) of the statutes; relating to: the duty of podiatrist, chiropractors, dentists and optometrist to inform patients of treatment options.

Analysis

Under Wisconsin's informed consent law, a podiatrist, chiropractor, dentist or optometrist who treats a patient has a duty to inform the patient about the availability of all alternate viable modes of treatment and the benefits and risks of those treatments, subject to certain exceptions.

A podiatrist, chiropractor, dentist or optometrist who fails to so inform a patient about modes of treatment may be held civilly liable for damages under tort law.

The Wisconsin Supreme Court has employed a "reasonable patient standard" to determine whether a physician has fulfilled his or her duty. Under the reasonable patient standard, a physician must disclose information necessary for a reasonable person in the patient's position to make an intelligent decision with respect to the choices of treatment. The Wisconsin Supreme Court has also held that the duty to inform a patient about alternate modes of treating the patient's condition includes the duty to inform a patient about alternate modes of diagnosing the patient's condition.

This bill instead provides that any podiatrist, chiropractor, dentist or optometrist who treats a patient has a duty to inform the patient only about the availability of reasonable alternate modes of treatment and the benefits and risks of those treatments that a reasonable podiatrist, chiropractor, dentist or optometrist in the same or a similar specialty would know and disclose under the circumstances.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1: 448.6(m) of the statutes is created to read:

448.6(m) Informed Consent: Any Podiatrist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable podiatrist standard is the standard for informing a patient under this section. The reasonable podiatrist standard requires disclosure only of information that a reasonable podiatrist would know and disclose under the circumstances.

The Podiatrist's duty to inform the patient under this section does not require disclosure of:

- (1) Detailed technical information that in all probability a patient would not understand.
- (2) Risks apparent or known to the patient.
- (3) Extremely remote possibilities that might falsely or detrimentally alarm the

patient.

(4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.

(5) Information in cases where the patient is incapable of consenting.

(6) Information about alternative modes of treatment for any condition the Podiatrist has not included in his or her diagnosis at the time the Podiatrist informs the patient.

Section 2: 446.(m) of the statutes is created to read:

446.(m) Informed Consent: Any Chiropractor who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable chiropractor standard is the standard for informing a patient under this section. The reasonable chiropractor standard requires disclosure only of information that a reasonable chiropractor would know and disclose under the circumstances. The Chiropractor's duty to inform the patient under this section does not require disclosure of:

- (1) Detailed technical information that in all probability a patient would not understand.
- (2) Risks apparent or known to the patient.
- (3) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- (4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- (5) Information in cases where the patient is incapable of consenting.
- (6) Information about alternative modes of treatment for any condition the Chiropractor has not included in his or her diagnosis at the time the Chiropractor informs the patient.

Section 3: 447.(m) of the statutes is created to read:

447.(m) Informed Consent: Any Dentist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable dentist standard is the standard for informing a patient under this section. The reasonable dentist standard requires disclosure only of information that a reasonable dentist would know and disclose under the circumstances. The Dentist's duty to inform the patient under this section does not require disclosure of:

- (1) Detailed technical information that in all probability a patient would not understand.
- (2) Risks apparent or known to the patient.
- (3) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- (4) Information in emergencies where failure to provide treatment would be

more harmful to the patient than treatment.

(5) Information in cases where the patient is incapable of consenting.

(6) Information about alternative modes of treatment for any condition the Dentist has not included in his or her diagnosis at the time the Dentist informs the patient.

Section 4: 448.(m) of the statutes is created to read:

449.(m): Informed Consent: Any Optometrist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable optometrist standard is the standard for informing a patient under this section. The reasonable optometrist standard requires disclosure only of information that a reasonable optometrist would know and disclose under the circumstances.

The Optometrist's duty to inform the patient under this section does not require disclosure of:

(1) Detailed technical information that in all probability a patient would not understand.

(2) Risks apparent or known to the patient.

(3) Extremely remote possibilities that might falsely or detrimentally alarm the patient.

(4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.

(5) Information in cases where the patient is incapable of consenting.

(6) Information about alternative modes of treatment for any condition the Optometrist has not included in his or her diagnosis at the time the Optometrist informs the patient.

Duchek, Michael

From: Loe, Emily
Sent: Friday, January 10, 2014 12:55 PM
To: Duchek, Michael
Cc: Gibbs, Adam
Subject: RE: Drafting request from Rep. Czaja - informed consent

Mike,

Alternate instead of alternative is fine. Our goal is to mirror as closely as possible.

And we like the addition of the initial applicability.

Thanks again,

Emily

From: Duchek, Michael
Sent: Friday, January 10, 2014 10:38 AM
To: Loe, Emily
Cc: Gibbs, Adam
Subject: RE: Drafting request from Rep. Czaja - informed consent

Update – As I was working on this, I noticed two things:

- 1.) The instructions used the word “alternative” instead of “alternate” in the created subsections (6). Since Act 111 (now s. 448.30 (7)) used “alternate” I changed “alternative” to “alternate” in those places as I assume this was unintended (“alternate” is also the word used in the introductions in 448.30 and the instructions). If for some reason you did actually mean “alternative” in that place, let me know.
- 2.) I added initial applicability provisions to match what was included in Act 111.

<https://docs.legis.wisconsin.gov/2013/related/acts/111>

That is all. Hope to have it to you soon,

-Mike

From: Loe, Emily
Sent: Wednesday, January 08, 2014 2:47 PM
To: Duchek, Michael
Cc: Gibbs, Adam
Subject: RE: Drafting request from Rep. Czaja - informed consent

Mike, please see the answers below. I have also copied Adam Gibbs from Sen. Grothman's office.

1. Compared to s. 448.30, the instructions and these provisions eliminate references to the word “medical” from “modes of treatment,” presumably because “medical”

implies a connection with the practice of medicine by physicians. They also eliminate references to specialties, which I assume is because these four professions do not have specialties in the same sense as physicians do. If any of this is incorrect, let me know.

Both statements are correct. We specifically eliminated the term medical and reference to specialties as they did not have the same sense as physician specialties.

2. I'm not sure each type of health care provider would necessarily be issuing a diagnosis per se in every case in which the provider explains treatment options, so you may wish to add some language to account for this fact somehow in each subsection (6).

We prefer the language as submitted and no additional language added. Each healthcare provider would be issuing a diagnosis in every case in which they explain treatment options.

3. Current law, s. 448.40 (2) (a), stats., requires the Medical Examining Board to promulgate rules implementing s. 448.30. Those rules are found in ch. Med 18 of the Administrative Code. Let me know if you would like to add language requiring, or permitting, the four boards implicated in this bill to promulgate rules implementing the informed consent provisions created in the bill as well.

Excellent concept. We agree that adding this information in for each board would be positive and approve that change.

Thank you!!

Emily

From: Duchek, Michael

Sent: Wednesday, January 08, 2014 11:31 AM

To: Loe, Emily

Subject: RE: Drafting request from Rep. Czaja

OK I just copied and pasted my questions. Here are the questions I had for you:

1. Compared to s. 448.30, the instructions and these provisions eliminate references to the word "medical" from "modes of treatment", presumably because "medical" implies a connection with the practice of medicine by physicians. They also eliminate references to specialties, which I assume is because these four professions do not have specialties in the same sense as physicians do. If any of this is incorrect, let me know.

2. I'm not sure each type of health care provider would necessarily be issuing a diagnosis per se in every case in which the provider explains treatment options, so you may wish to add some language to account for this fact somehow in each subsection (6).

3. Current law, s. 448.40 (2) (a), stats., requires the Medical Examining Board to promulgate rules implementing s. 448.30. Those rules are found in ch. Med 18 of the Administrative Code. Let me know if you would like to add language requiring, or permitting, the four boards implicated in this bill to promulgate rules implementing the informed consent provisions created in the bill as well.

From: Loe, Emily

Sent: Wednesday, January 08, 2014 11:30 AM

To: Duchek, Michael
Subject: RE: Drafting request from Rep. Czaja

Yes, please send the drafter's notes so we can give them a look.

Thanks,
Emily

From: Duchek, Michael
Sent: Wednesday, January 08, 2014 11:29 AM
To: Loe, Emily
Subject: RE: Drafting request from Rep. Czaja

Emily,

It's in our editing room but it has not been edited yet. In addition, I had a couple small notes and questions. If you want, I could email you those instead to expedite things. Let me know,

-Mike

From: Loe, Emily
Sent: Wednesday, January 08, 2014 11:07 AM
To: Duchek, Michael
Subject: RE: Drafting request from Rep. Czaja

Hi Mike,

Just checking in on the progress of the draft for informed consent podiatrist, chiropractor, dentist, and optometrist.

Rep. Czaja is hoping to introduce the bill soon, and try for a hearing yet in January.

Thank you.
Emily
6-7694

From: Loe, Emily
Sent: Wednesday, December 11, 2013 10:01 AM
To: Duchek, Michael
Subject: RE: Drafting request from Rep. Czaja

Thank you!

From: Duchek, Michael
Sent: Wednesday, December 11, 2013 10:00 AM
To: Loe, Emily
Subject: RE: Drafting request from Rep. Czaja

That revised document makes more sense, yes. Thanks,

-Mike

From: Loe, Emily
Sent: Wednesday, December 11, 2013 9:57 AM
To: Duchek, Michael
Subject: RE: Drafting request from Rep. Czaja

Mike,

Makes sense to me. I passed on your suggestion to the folks Rep. Czaja has been working with; they came back with the attached revised document. Does it accomplish the goal you're describing?

Emily

<< File: informed consent v2.docx >>

From: Duchek, Michael
Sent: Wednesday, December 11, 2013 8:22 AM
To: Loe, Emily
Subject: RE: Drafting request from Rep. Czaja

Emily,

I ran this by Anne and I think she agreed that it wouldn't seem to work as they have it laid out in their proposed statutes, as it suggests that other professions are held to a standard set by physicians. If they somehow maybe want physicians to set the standard of disclosure for podiatrists, optometrists, etc., maybe there might be a way to accomplish that in a bill, but I wonder if the intent is actually to say that there is a "reasonable chiropractor" standard for chiropractors, a "reasonable podiatrist" standard for podiatrists, etc., because there seems to be a discrepancy between the text of the proposed statutes and what they describe in their analysis. In their analysis, it suggests something more along the lines of what I have described (i.e., that the podiatrist would have to disclose what a reasonable podiatrist would disclose). So I would suggest using a "reasonable X" standard where X = the particular profession, instead of referring to a "reasonable physician" standard for professions that are not physicians. Does that make sense?

-Mike

From: Loe, Emily
Sent: Tuesday, December 10, 2013 2:16 PM
To: Duchek, Michael
Subject: RE: Drafting request from Rep. Czaja

Mike,

Yes, please share with Anne at Leg Council to get her input, before we proceed with a draft.

Thank you!

Emily

From: Duchek, Michael
Sent: Tuesday, December 10, 2013 1:53 PM
To: Loe, Emily
Subject: RE: Drafting request from Rep. Czaja

Emily,

I am the correct person and can handle this request.

I read over the request though, and it seems that the intent is to hold podiatrists, chiropractors, dentists, and optometrists to the same standards as physicians. However, s. 448.30, as modified by AB 139, uses a reasonable physician standard that is predicated on the treating physician's specialty (i.e., orthopedics, oncology, etc.). Since podiatrists, chiropractors, dentists, and optometrists are, by definition, not physicians, I don't think using this language referring to a physician's specialty works in those contexts (because they're not physicians who have any such medical specialty). I could share the request with Anne Sappenfield at Leg. Council who worked on AB 139 and might have some further thoughts. Would that be OK or would you just like a draft at this point? Let me know either way or if you have any other thoughts,

-Mike

From: Loe, Emily
Sent: Tuesday, December 10, 2013 1:33 PM
To: Duchek, Michael
Subject: Drafting request from Rep. Czaja

Michael,
Rep. Czaja would like to request a draft for the attached document, related to informed consent for podiatrist, chiropractor, dentist, and optometrist. I assumed you are the drafter to contact as you worked on the physicians' bill – please let me know if I should redirect this request.

Emily

<< File: 20131210135357904.pdf >>

Emily Loe | Office of Rep. Mary Czaja
35th Assembly District
(o) 608-266.7694 | (e) emily.loe@legis.wi.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



RMK

LRB-3809/P1

MED: [unclear]

eev

Mon
4/13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAI
xref NA

[Handwritten scribble]

Gen

1 AN ACT ...; relating to: a duty of podiatrists, chiropractors, dentists, and
2 optometrists to inform patients of treatment options and granting rule-making authority

Analysis by the Legislative Reference Bureau

plus Analysis

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 446.08 of the statutes is created to read:

446.08 Informed Consent. Any chiropractor who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable chiropractor standard is the standard for informing a patient under this section. The reasonable chiropractor standard requires disclosure of only that information that a reasonable chiropractor would know and disclose under the circumstances. The chiropractor's

125
1-3

No change

✓
1 duty to inform the patient under this section does not require disclosure of any of the
2 following:

3 (1) Detailed technical information that in all probability a patient would not
4 understand.

5 (2) Risks apparent or known to the patient.

6 (3) Extremely remote possibilities that might falsely or detrimentally alarm
7 the patient.

8 (4) Information in emergencies where failure to provide treatment would be
9 more harmful to the patient than treatment.

10 (5) Information in cases where the patient is incapable of consenting.

11 (6) Information about ~~alternative~~ ^{alternate} modes of treatment for any condition the
12 chiropractor has not included in his or her diagnosis at the time the chiropractor
13 informs the patient.

14 SECTION 2. 447.40 of the statutes is [✓]created to read:

15 **447.40 Informed ~~C~~onsent.** Any dentist who treats a patient shall inform the
16 patient about the availability of reasonable alternate modes of treatment and about
17 the benefits and risks of these treatments. The reasonable dentist standard is the
18 standard for informing a patient under this section. The reasonable dentist standard
19 requires disclosure ~~only of~~ ^{sum of only that} information that a reasonable dentist would know and
20 disclose under the circumstances. The dentist's duty to inform the patient under this
21 section does not require disclosure of:

22 (1) Detailed technical information that in all probability a patient would not
23 understand.

24 (2) Risks apparent or known to the patient.

(vis
2-13)

No
Change

1 (3) Extremely remote possibilities that might falsely or detrimentally alarm
2 the patient.

3 (4) Information in emergencies where failure to provide treatment would be
4 more harmful to the patient than treatment.

5 (5) Information in cases where the patient is incapable of consenting.

6 (6) Information about ~~alternative~~ ^{alternate} modes of treatment for any condition the
7 dentist has not included in his or her diagnosis at the time the dentist informs the
8 patient.

9 **SECTION 3.** 448.697 of the statutes is created to read:

10 **448.697 Informed Consent.** Any podiatrist who treats a patient shall inform
11 the patient about the availability of reasonable alternate modes of treatment and
12 about the benefits and risks of these treatments. The reasonable podiatrist standard
13 is the standard for informing a patient under this section. The reasonable podiatrist
14 standard requires disclosure only of information that a reasonable podiatrist would
15 know and disclose under the circumstances. The podiatrist's duty to inform the
16 patient under this section does not require disclosure of any of the following:

17 (1) Detailed technical information that in all probability a patient would not
18 understand.

19 (2) Risks apparent or known to the patient.

20 (3) Extremely remote possibilities that might falsely or detrimentally alarm
21 the patient.

22 (4) Information in emergencies where failure to provide treatment would be
23 more harmful to the patient than treatment.

24 (5) Information in cases where the patient is incapable of consenting.

us
3-8

(6) Information about ~~alternative~~^{alternate} modes of treatment for any condition the podiatrist has not included in his or her diagnosis at the time the podiatrist informs the patient.

SECTION 4. 449.25 of the statutes is created to read:

449.25 Informed Consent. (1) Any optometrist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable optometrist standard is the standard for informing a patient under this section. The reasonable optometrist standard requires disclosure only of information that a reasonable optometrist would know and disclose under the circumstances. The optometrist's duty to inform the patient under this section does not require disclosure of any of the following:

(1) Detailed technical information that in all probability a patient would not understand.

(2) Risks apparent or known to the patient.

(3) Extremely remote possibilities that might falsely or detrimentally alarm the patient.

(4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.

(5) Information in cases where the patient is incapable of consenting.

(6) Information about ~~alternative~~^{alternate} modes of treatment for any condition the optometrist has not included in his or her diagnosis at the time the optometrist informs the patient.

(END)

D-note

24

ins
4-23

INSERT ANALYSIS

SAJ

Under Wisconsin's physician informed consent law, a physician who treats a patient has a duty to inform the patient about treatment options. A physician who fails to so inform a patient about modes of treatment may be held civilly liable for damages under tort law. This common law duty, as it relates to physicians, has been codified as a statutory duty.

In the case *Hannemann v. Boyson*, 2005 WI 94, the Wisconsin Supreme Court wrote that this duty to inform a patient about treatment options was not necessarily limited to physicians, and the court held in *Hannemann* that a chiropractor had such a duty to inform a patient. The duty, as it relates to chiropractors or any other health care professionals, has not previously been codified as a statutory duty.

2013 Wisconsin Act 111 modified the codified duty of physicians to inform a patient about treatment options in a number of ways, including: 1) providing that the "reasonable physician standard," as defined in the act, is the standard for informing a patient and 2) providing that the physician's duty does not require the disclosure of information about alternate medical modes of treatment for any condition the physician has not included in his or her diagnosis at the time the physician informs the patient.

This bill codifies into the statutes a similar duty to inform a patient about treatment options with respect to the following types of health care professionals: 1) chiropractors; 2) ~~podiatrists~~ ^{dentists}; 3) ~~dentists~~ ^{podiatrists}; and 4) optometrists.

Specifically, the bill provides that any chiropractor, podiatrist, dentist, or optometrist who treats a patient must inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The bill provides that the reasonable chiropractor, podiatrist, dentist, or optometrist standard, whichever is applicable, is the standard for informing a patient under that duty. The bill provides that this standard requires disclosure only of information that a reasonable chiropractor, podiatrist, dentist, or optometrist would know and disclose under the circumstances. The bill provides that a chiropractor's, podiatrist's, dentist's, or optometrist's duty to so inform the patient does not require disclosure of any of the following:

- 1) Detailed technical information that in all probability a patient would not understand.
- 2) Risks apparent or known to the patient.
- 3) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- 4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- 5) Information in cases where the patient is incapable of consenting.
- 6) Information about alternate modes of treatment for any condition the chiropractor, podiatrist, dentist, or optometrist has not included in his or her diagnosis at the time the chiropractor, podiatrist, dentist, or optometrist informs the patient.

Also under current law, the Medical Examining Board must promulgate rules implementing the physician's duty to inform a patient about treatment options, as codified into the statutes. This bill similarly requires the Chiropractic Examining Board, the Podiatry Affiliated Credentialing Board, the Dentistry Examining Board, and the Optometry Examining Board to promulgate rules implementing the chiropractor's, podiatrist's, dentist's, and optometrist's duties to inform a patient about treatment options, as those duties are codified into the statutes by the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

INSERT 1-3

1 **SECTION 1.** 446.02 (11) of the statutes is created to read:
2 446.02 (11) The examining board shall promulgate rules implementing s.
3 446.08.

INSERT 2-13

4 **SECTION 2.** 447.02 (2) (f) of the statutes is created to read:
5 447.02 (2) (f) Provisions implementing s. 447.40.

INSERT 3-8

6 **SECTION 3.** 448.695 (1) of the statutes is renumbered 448.695 (1) (intro.) and
7 amended to read:
8 448.695 (1) (intro.) The affiliated credentialing board shall promulgate all of
9 the following rules defining: Δ plain
10 (a) Rules defining the acts or attempted acts of commission or omission that
11 constitute unprofessional conduct under s. 448.60 (5).

History: 1997 a. 175; 2009 a. 106.

12 **SECTION 4.** 448.695 (1) (b) of the statutes is created to read:
13 448.695 (1) (b) Rules implementing s. 448.697.

INSERT 4-23

14 (2) The examining board shall promulgate rules implementing sub. (1).

SECTION 5. Initial applicability.

(1) The treatment of section 446.08[✓] of the statutes first applies to a chiropractor[✓] required to inform a patient about modes of treatment on the effective date of this subsection.[✓]

(2) The treatment of section 447.40[✓] of the statutes first applies to a dentist[✓] required to inform a patient about modes of treatment on the effective date of this subsection.[✓]

(3) The treatment of section 448.697[✓] of the statutes first applies to a podiatrist required to inform a patient about modes of treatment on the effective date of this subsection.[✓]

(4) The treatment of section 449.25[✓] (1) of the statutes first applies to an optometrist[✓] required to inform a patient about modes of treatment on the effective date of this subsection.[✓]

Duchek, Michael

From: Rep.Czaja
Sent: Wednesday, January 15, 2014 12:42 PM
To: Duchek, Michael
Subject: RE: Draft review: LRB -3809/P1 Topic: Informed consent for podiatrists, chiropractors, dentists, and optometrists

Mike,

This LRB is good to go; could we please have a /1 to circulate.

Emily
6-7694

From: LRB.Legal
Sent: Monday, January 13, 2014 10:51 AM
To: Rep.Czaja
Subject: Draft review: LRB -3809/P1 Topic: Informed consent for podiatrists, chiropractors, dentists, and optometrists

Following is the PDF version of draft LRB -3809/P1.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3809/B
MED:eev:jm

By 1/16

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D - note
on last
page

regen

- 1 AN ACT *to renumber and amend* 448.695 (1); and *to create* 446.02 (11), 446.08,
2 447.02 (2) (f), 447.40, 448.695 (1) (b), 448.697 and 449.25 of the statutes;
3 **relating to:** a duty of podiatrists, chiropractors, dentists, and optometrists to
4 inform patients of treatment options and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under Wisconsin's physician informed consent law, a physician who treats a patient has a duty to inform the patient about treatment options. A physician who fails to so inform a patient about modes of treatment may be held civilly liable for damages under tort law. This common law duty, as it relates to physicians, has been codified as a statutory duty.

In the case *Hannemann v. Boyson*, 2005 WI 94, the Wisconsin Supreme Court wrote that this duty to inform a patient about treatment options was not necessarily limited to physicians, and the court held in *Hannemann* that a chiropractor had such a duty to inform a patient. The duty, as it relates to chiropractors or any other health care professionals, has not previously been codified as a statutory duty.

2013 Wisconsin Act 111 modified the codified duty of physicians to inform a patient about treatment options in a number of ways, including: 1) providing that the "reasonable physician standard," as defined in the act, is the standard for informing a patient and 2) providing that the physician's duty does not require the disclosure of information about alternate medical modes of treatment for any condition the physician has not included in his or her diagnosis at the time the physician informs the patient.

other than
physicians

types of

This bill codifies into the statutes a similar duty to inform a patient about treatment options with respect to the following types of health care professionals: 1) chiropractors; 2) dentists; 3) podiatrists; and 4) optometrists.

Specifically, the bill provides that any chiropractor, dentist, podiatrist, or optometrist who treats a patient must inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The bill provides that the reasonable chiropractor, dentist, podiatrist, or optometrist standard, whichever is applicable, is the standard for informing a patient under that duty. The bill provides that this standard requires disclosure only of information that a reasonable chiropractor, dentist, podiatrist, or optometrist would know and disclose under the circumstances. The bill provides that a chiropractor's, dentist's, podiatrist's, or optometrist's duty to so inform the patient does not require disclosure of any of the following:

- 1) Detailed technical information that in all probability a patient would not understand.
- 2) Risks apparent or known to the patient.
- 3) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- 4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- 5) Information in cases where the patient is incapable of consenting.
- 6) Information about alternate modes of treatment for any condition the chiropractor, dentist, podiatrist, or optometrist has not included in his or her diagnosis at the time the chiropractor, dentist, podiatrist, or optometrist informs the patient.

Also under current law, the Medical Examining Board must promulgate rules implementing the physician's duty to inform a patient about treatment options, as codified into the statutes. This bill similarly requires the Chiropractic Examining Board, the Dentistry Examining Board, the Podiatry Affiliated Credentialing Board, and the Optometry Examining Board to promulgate rules implementing the chiropractor's, dentist's, podiatrist's, and optometrist's duties to inform a patient about treatment options, as those duties are codified into the statutes by the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 446.02 (11) of the statutes is created to read:

2 446.02 (11) The examining board shall promulgate rules implementing s.
3 446.08.

4 **SECTION 2.** 446.08 of the statutes is created to read:

1 **446.08 Informed consent.** Any chiropractor who treats a patient shall inform
2 the patient about the availability of reasonable alternate modes of treatment and
3 about the benefits and risks of these treatments. The reasonable chiropractor
4 standard is the standard for informing a patient under this section. The reasonable
5 chiropractor standard requires disclosure only of information that a reasonable
6 chiropractor would know and disclose under the circumstances. The chiropractor's
7 duty to inform the patient under this section does not require disclosure of any of the
8 following:

9 (1) Detailed technical information that in all probability a patient would not
10 understand.

11 (2) Risks apparent or known to the patient.

12 (3) Extremely remote possibilities that might falsely or detrimentally alarm
13 the patient.

14 (4) Information in emergencies where failure to provide treatment would be
15 more harmful to the patient than treatment.

16 (5) Information in cases where the patient is incapable of consenting.

17 (6) Information about alternate modes of treatment for any condition the
18 chiropractor has not included in his or her diagnosis at the time the chiropractor
19 informs the patient.

20 **SECTION 3.** 447.02 (2) (f) of the statutes is created to read:

21 447.02 (2) (f) Provisions implementing s. 447.40.

22 **SECTION 4.** 447.40 of the statutes is created to read:

23 **447.40 Informed consent.** Any dentist who treats a patient shall inform the
24 patient about the availability of reasonable alternate modes of treatment and about
25 the benefits and risks of these treatments. The reasonable dentist standard is the

1 standard for informing a patient under this section. The reasonable dentist standard
2 requires disclosure only of information that a reasonable dentist would know and
3 disclose under the circumstances. The dentist's duty to inform the patient under this
4 section does not require disclosure of *any of the following*

5 (1) Detailed technical information that in all probability a patient would not
6 understand.

7 (2) Risks apparent or known to the patient.

8 (3) Extremely remote possibilities that might falsely or detrimentally alarm
9 the patient.

10 (4) Information in emergencies where failure to provide treatment would be
11 more harmful to the patient than treatment.

12 (5) Information in cases where the patient is incapable of consenting.

13 (6) Information about alternate modes of treatment for any condition the
14 dentist has not included in his or her diagnosis at the time the dentist informs the
15 patient.

16 SECTION 5. 448.695 (1) of the statutes is renumbered 448.695 (1) (intro.) and
17 amended to read:

18 448.695 (1) (intro.) The affiliated credentialing board shall promulgate all of
19 the following rules defining:

20 (a) Rules defining the acts or attempted acts of commission or omission that
21 constitute unprofessional conduct under s. 448.60 (5).

22 SECTION 6. 448.695 (1) (b) of the statutes is created to read:

23 448.695 (1) (b) Rules implementing s. 448.697.

24 SECTION 7. 448.697 of the statutes is created to read:

1 **448.697 Informed consent.** Any podiatrist who treats a patient shall inform
2 the patient about the availability of reasonable alternate modes of treatment and
3 about the benefits and risks of these treatments. The reasonable podiatrist standard
4 is the standard for informing a patient under this section. The reasonable podiatrist
5 standard requires disclosure only of information that a reasonable podiatrist would
6 know and disclose under the circumstances. The podiatrist's duty to inform the
7 patient under this section does not require disclosure of any of the following:

8 (1) Detailed technical information that in all probability a patient would not
9 understand.

10 (2) Risks apparent or known to the patient.

11 (3) Extremely remote possibilities that might falsely or detrimentally alarm
12 the patient.

13 (4) Information in emergencies where failure to provide treatment would be
14 more harmful to the patient than treatment.

15 (5) Information in cases where the patient is incapable of consenting.

16 (6) Information about alternate modes of treatment for any condition the
17 podiatrist has not included in his or her diagnosis at the time the podiatrist informs
18 the patient.

19 **SECTION 8.** 449.25 of the statutes is created to read:

20 **449.25 Informed consent.** (1) Any optometrist who treats a patient shall
21 inform the patient about the availability of reasonable alternate modes of treatment
22 and about the benefits and risks of these treatments. The reasonable optometrist
23 standard is the standard for informing a patient under this section. The reasonable
24 optometrist standard requires disclosure only of information that a reasonable
25 optometrist would know and disclose under the circumstances. The optometrist's

1 duty to inform the patient under this section does not require disclosure of any of the
2 following:

3 (a) Detailed technical information that in all probability a patient would not
4 understand.

5 (b) Risks apparent or known to the patient.

6 (c) Extremely remote possibilities that might falsely or detrimentally alarm the
7 patient.

8 (d) Information in emergencies where failure to provide treatment would be
9 more harmful to the patient than treatment.

10 (e) Information in cases where the patient is incapable of consenting.

11 (f) Information about alternate modes of treatment for any condition the
12 optometrist has not included in his or her diagnosis at the time the optometrist
13 informs the patient.

14 (2) The examining board shall promulgate rules implementing sub. (1).

15 **SECTION 9. Initial applicability.**


16 (1) The treatment of section 446.08 of the statutes first applies to a chiropractor
17 required to inform a patient about modes of treatment on the effective date of this
18 subsection.

19 (2) The treatment of section 447.40 of the statutes first applies to a dentist
20 required to inform a patient about modes of treatment on the effective date of this
21 subsection.

22 (3) The treatment of section 448.697 of the statutes first applies to a podiatrist
23 required to inform a patient about modes of treatment on the effective date of this
24 subsection.

1 (4) The treatment of section 449.25 (1) of the statutes first applies to an
2 optometrist required to inform a patient about modes of treatment on the effective
3 date of this subsection.

4 (END)

Just so you are aware: 

1. I made a slight clarification in the second sentence of the second paragraph of the analysis.
2. I added "all of the following" at the end of the introduction to s. 447.40 to be consistent with the other provisions in the bill and our current drafting style for introductions. (This is a purely technical change that should have been in the /P1 version.)

MED

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3809/1dn
MED:eev:jm

January 15, 2014

Just so you are aware:

1. I made a slight clarification in the second sentence of the second paragraph of the analysis.
2. I added "all of the following" at the end of the introduction to s. 447.40 to be consistent with the other provisions in the bill and our current drafting style for introductions. (This is a purely technical change that should have been in the /P1 version.)

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov

Barman, Mike

From: Loe, Emily
Sent: Thursday, January 16, 2014 2:49 PM
To: LRB.Legal
Subject: Draft Review: LRB -3809/1 Topic: Informed consent for podiatrists, chiropractors, dentists, and optometrists

Please Jacket LRB -3809/1 for the ASSEMBLY.